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SUBJECT: PRESS FREEDOM UNDER NEPAL'S STATE OF EMERGENCY

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SUMMARY

1. (SBU) SUMMARY: Since the beginning of the State of Emergency in Nepal, 123 journalists have been arrested, with 35 still detained, three tortured, and one reportedly killed. Inaccuracy and partisanship in the press have led to government mistrust and restrictions on publications. Press reaction has ranged from outrage at the questionable circumstances of and motives for the arrests, to welcome acceptance of government restrictions as a means of insuring increased accuracy of reporting. Nepal's Maoists also restrict the press, as they have threatened journalists with death for writing certain kinds of articles. Currently, the press is pushing for increased access to conflict areas and a Freedom of Information Bill to help expand press freedoms in Nepal. The Embassy will continue to press formore cooperative military-press relations. End Summary.

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ARREST OF JOURNALISTS

2. (U) As of June 26, 2002, the Informal Sector Service Center (INSEC), a Nepali human rights NGO, reports that 123 Nepali journalists have been arrested under the Terrorist and Destructive Activities Ordinance (TADO). Of these, 35 are still in custody. (Note: INSEC provides the names and dates of arrest and release for all these cases. End note.) Three journalists, Shankar Khanal of Space Time Daily, Shyam Shrestha of Mulyankan, and Bijay Raj Acharya of Srijanashil Prakashan, have reported being tortured while in police custody. The actual number of journalists tortured is rumored to be higher. Recently, Jana Astha, a left-leaning newspaper with a fairly good track record for accuracy, reported that a Maoist journalist who was arrested in May, Krishna Sen, was killed in custody. (Note: The government has not confirmed reports of Sen's death. The Home Ministry says it has no information on Sen's whereabouts; the Defense Ministry says the same. Prime Minister Deuba told the press June 27 that the government will disclose the facts regarding Mr. Sen's wherabouts at the time of his death in "due time." The Prime Minister assured the Ambassador privately on July 4 that his government would initiate an inquiry. End note.)

3. (U) Of those arrested, most were uncharged and can only speculate on what led to their detention. Under TADO anyone suspected of terrorist activities may be held for 90 days without charge, extendable by 90 more days with Home Ministry permission. The reasons for arrest go beyond pro-Maoist publications, which are clearly prohibited, and security personnel admit to arresting journalists to pressure them into revealing Maoist contacts and other information. The Prime Minister is quoted as saying in a March 6 statement that Gopal Budhatoka, editor of Sangher, was arrested for "spreading rumors and demoralizing the army." Colleagues of Mr. Budhatoki attribute his arrest to an article he published about financial irregularities in helicopter purchases by the Royal Nepal Army.

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GOVERNMENT POSITION

4. (U) The Secretary at the Ministry of Information reiterated in a private interview on June 3 that the curtailment of rights under the emergency is not directed against the press, but added that the press cannot publish items that favor the Maoists or demoralize the military. When asked to elaborate on what qualifies as demoralization, he gave an example of a report that RNA personnel committed human rights abuses or killed civilians, when reporters had not been there to verify the information firsthand.

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CREDIBILITY OF THE PRESS

5. (SBU) Nepal's press faces a credibility gap because of their inaccuracy, history of leniency in their criticism of the Maoists, and political partisanship. A military source

said that the military feels reluctant to facilitate information gathering by journalists because events are frequently misreported. Journalists also report that before the state of emergency, the press seemed to favor the Maoists, raising concerns that increased press freedom and access to conflict areas will lead to unbalanced criticism of the military rather than of the Maoists. Many newspapers also have strong political ties, creating questions about the fairness of reporting. The government argues that restrictions on the press are in the interest of preventing the spread of untrue and potentially dangerous statements. On the other side, the press argues that government oversight reduces its credibility in the public eye, as journalists are seen as government mouthpieces.

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LEGAL CONCERNS  
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16. (U) Journalists and their families have raised concerns about the legality of arrests and the "disappearance" of arrested journalists. They have made multiple allegations of violations of the law prohibiting the military from participating in civilian arrests or interrogation. This is a legally murky area, as TADO requires that the army hand over civilians, but not combatants, to the police, and the army claims it is arresting suspected Maoists, not "civilians." There have also been complaints of raids of press offices by both uniformed and plainclothes police without warrants, though this is allowed under TADO. Finding the location of arrested journalists is a major issue, as security forces frequently do not disclose the location where the arrested person is being held, and generally do not allow visits by family members. There is also the problem of determining whether an arrested journalist is being held by the police or the army, as both frequently deny any knowledge of the whereabouts of arrested persons. The right to file writs of habeas corpus is still guaranteed, however, and many colleagues and relatives of those arrested have been making use of this right. The relatives of ten arrested journalists filed such a writ earlier this year. After filing, the family members report that they were harassed repeatedly by security personnel. A writ of habeas corpus has also been filed by the Nepal Press Institute for one of its members, and the Supreme Court has ordered that he be found. To date, these journalists have not been produced.

17. (SBU) The National Human Rights Commission (NHRC) has been prominent in its attempts to gain access to information about journalists who have been arrested, interrogated, or detained. The NHRC works for accountability in the security forces and tries to ensure that actions taken against journalists stay within the legal provisions of the state of emergency and TADO. This Commission has made inquiries and requested notification within three days of the whereabouts of arrested journalists. An official in the complaint division reports, however, that it has experienced extreme difficulties in its work as the government is very uncooperative in responding to its inquiries. The "response is always that they haven't arrested anybody." Despite these difficulties, as a constitutional body the NHRC is the most powerful force in Nepal in the monitoring of treatment of journalists.

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MAOISTS  
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18. (U) The Press is restricted by the Maoists as well. There have been reports from all over the country that newspapers have been warned against "collaborating with the government" by printing articles on certain subjects. As of now, however, only one serious incident has been reported. Demling Lama, a correspondent of Radio Nepal, was abducted by Maoists and held for 36 hours, because, he believes, of an article that he wrote about their activities. While torturing him, they told him that they were planning to kill other journalists in the country. Mr. Lama managed to escape, fearing for his life.

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PRESS REACTION  
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19. (SBU) In conversation with five journalists, all stated that self-censorship is practiced by everyone in the media in the form of avoiding materials that may violate the 16 directives for the press (See para 12) or lead to repercussions by law enforcement agencies. A member of INSEC complained that the press does not publish reports of human rights abuses because they are "totally self-censored." Taranath Dahal of the Federation of Nepali Journalists stated "we have become suspects," and described an atmosphere of fear and demoralization created by the arrests and intimidation of journalists around Nepal. The National Human Rights Commission also reports a situation of intense fear.

An official at the Commission stated that he has received from journalists many reports of torture by police, but "most people request us not to report these because they are so scared...those people could be arrested again tomorrow." When asked if he thinks the press is afraid to print the full news, he gave an example of an occasion near Nepalgunj where members of the NHRC were led by journalists to four bodies, presumably shot by the RNA. When the members asked the journalists why they had not reported the incident, the journalists responded that they were afraid of retribution from the military.

10. (U) In contrast, Krishna Timilsina, Executive Director of the Nepal Press Institute (NPI), stated that he believes the censorship measures taken by the government are necessary, explaining that "In this abnormal situation no one can expect the freedoms guaranteed constitutionally...In war we have to observe some special rules and regulations and abide by the legal provisions." He also considered it a matter of ethics not to criticise the military or the monarchy, and supported the directive against publishing articles that may be demoralizing to the military. He explained that the NPI practices rigorous self-censorship, and as a result has not experienced government interference.

11. (SBU) The political leanings of the press have been an issue since the beginning of the state of emergency. In the five years preceding the emergency, leading journalists say that the majority of the press seemed to sympathize with the Maoists to some extent. When the state of emergency was declared, however, the publication of Maoist press releases came to an immediate end and the press "surrendered" to government directives. Media groups, they say, have been eager to prove their patriotism by denouncing the Maoists and practicing a self-censorship that in some cases goes beyond the restrictions placed on them.

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PRESS UNDER EMERGENCY  
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12. (U) Several Articles and Sections of the Nepali Constitution were suspended by the State of Emergency imposed on November 26, 2001 and the Terrorist and Destructive Activities Ordinance (TADO). Two of these have direct bearing on the press. These are Article 12.2, which guarantees freedom of movement throughout the kingdom, and Article 13, guaranteeing press and publication rights and protection against censorship. Also suspended are Article 15 against preventive detention and Article 16 guaranteeing the right to information. Two days after the declaration of emergency, a set of 16 directives was issued to the press by the Ministry of Information and Communication detailing what information it considered fit to broadcast or publish. Among the categories proscribed as not fit to publish are news items hurting or shocking civilians, their faith, morality and social norms; any item weakening multi-party democracy; and any report insulting, humiliating, or shocking the army, police, or civil servants. At the same time the press was encouraged to publish the heroic deeds of the RNA as well as verified news from the Ministry of Defense. The press has largely followed these directives for a variety of reasons, including patriotism and fear.

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ACCESS TO INFORMATION  
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13. (U) Two current hot issues in the Nepali press freedom debate both relate to access to information. The first is the issue of media access to conflict areas and the right to independent verification. At a seminar on June 5, a representative of the RNA expressed the view that the military is not interested in facilitating media access to the field because security forces need to focus on their primary objective of fighting the war, and could not guarantee the safety of the journalists. He also reiterated concern that the journalists would publish false information that is damaging to the military. Journalists responded that they were willing to accept the risk and burden of being in a conflict zone, but they needed permission to travel to those areas as well as increased military cooperation in providing them with information to help ensure that they are able to report accurately. Some progress was made on setting up a meeting between media and military leaders to discuss this issue further. The Embassy has encouraged greater involvement of the press in conflict areas as a mutually beneficial action, and the military has, on a few occasions, taken members of the press to the field.

14. (U) The second high-profile issue regarding access to information is a proposed Right to Information Bill, to take effect after the State of Emergency. The right to information is guaranteed in the presently suspended Article 16 of the Nepali Constitution, but the draft Bill defines who will have this access, and specifies the kinds of information

included. Section 8 of the Bill requires the provision of information regarding unlawful activities perpetrated by a public official, and Section 14 defines the mechanism for redress. The Bill was proposed jointly by the Nepal Press Institute and the Federation of Nepali Journalists in 2001, and the Secretary at the Ministry of Information announced plans to introduce it in this year's Parliamentary summer session. With the dissolution of the Parliament, consideration of the Bill has been postponed.

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COMMENT  
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15. COMMENT: Clearly, The Maoist insurrection and the Government's counter-insurgency campaign have taken a serious toll on press freedom in Nepal. Contributing to this problem have been the low professionalism of elements of the press, the expressed sympathy of some journalists for the Maoists before the declaration of the state of emergency, and the deeply ingrained habits of non-transparency of the RNA. The Embassy has been working to encourage greater press freedom in Nepal, arguing that the detention of journalists for the purpose of intimidation is counterproductive in the fight against Maoist terrorism and risks giving Nepal a bad human rights reputation that could become an obstacle to continued international assistance. The Ambassador plans to raise this issue again with the Prime Minister during their next meeting. US training now being planned for the RNA will include discussion on more cooperative military-press relations. End Comment.  
MALINOWSKI